

# **EXHIBIT C**

**OPEN SOCIETY  
JUSTICE INITIATIVE**

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**May 1, 2020**

***Via online portal and email  
Food and Drug Administration***

Sarah Kotler, FOIA Officer  
Division of Freedom of Information, Office of the Exec. Secretariat, OC5630  
Fishers Lane, Room 1035  
Rockville, MD 20857  
Fax: (301) 827-9267

**Re: Freedom of Information Act Request  
Expedited Processing and Fee Waiver Requested**

To whom it may concern:

This letter constitutes a request (“Request”) pursuant to the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552 submitted on behalf of the Open Society Justice Initiative (“Justice Initiative”), an operational program of the Open Society Institute (“OSI”), a New York State charitable trust and nonprofit organization.<sup>1</sup> We request Food and Drug Administration (FDA) records concerning the timing and substance of the Executive Branch’s response to the novel coronavirus, now known as severe acute respiratory syndrome coronavirus 2 or “SARS-CoV-2,” the virus that causes the disease known as coronavirus disease 2019 or “COVID-19.”<sup>2</sup> We respectfully ask that requests contained herein be forwarded to any other component agency as appropriate.

Expedited processing is requested pursuant to 5 U.S.C. § 552(a)(6)(E), as is a fee waiver, pursuant to 5 U.S.C. § 552(a)(4)(A)(iii).

**A. RECORDS REQUESTED**

The Justice Initiative requests disclosure of the following records created on or after October 1, 2019:<sup>3</sup>

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<sup>1</sup> This is a follow-on FOIA request filed pursuant to an April 30, 2020 conversation with FOIA Officer Ms. Sarah Kotler about a FOIA request we previously filed on April 27, 2020. We withdraw the April 27, 2020 without prejudice to the propriety of that request.

<sup>2</sup> On February 11, 2020, the World Health Organization announced that the disease caused by the new coronavirus will be known by the official name of “COVID-19.” World Health Organization, *Naming the coronavirus disease (COVID-19) and the virus that causes it*, [https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-\(covid-2019\)-and-the-virus-that-causes-it](https://www.who.int/emergencies/diseases/novel-coronavirus-2019/technical-guidance/naming-the-coronavirus-disease-(covid-2019)-and-the-virus-that-causes-it).

<sup>3</sup> For the purpose of this request, the term “records” includes, but is not limited to, any and all agendas, agreements; analyses; calendars; correspondence; data; databases; directives; documents; e-mails and e-mail attachments, including sent through personal email accounts (e.g., Gmail); reports; rules; schedules; studies; tables of contents and contents of binders; talking points; technical specifications; training materials; examinations; faxes; files; guidance; guidelines; evaluations; instructions; letters; manifests; manuals; memoranda; notes; orders; prepared documentation for meetings, calls, teleconferences, or other discussions responsive to our request; policies; procedures; protocols; text messages and messages sent or received through other messaging applications (e.g., WhatsApp, iMessage, Signal); voicemails; and any other materials. In the event that such records once existed but have now been destroyed, please disclose any records that are integrally related to, summarize, or are interchangeable with said records. Press clippings and news articles that are unaccompanied by any commentary need not be produced.

**I. Notice of SARS-CoV-2 and COVID-19**

1. The earliest records in the FDA's possession indicating that the FDA's Commissioner, Dr. Stephen Hahn, was aware of what is now known as SARS-CoV-2 and/or COVID-19.

**II. Executive Branch Efforts to Counter SARS-CoV-2 and COVID-19**

2. FDA records discussing World Health Organization (WHO) test kits, including but not limited to communications to and from Dr Stephen Hahn, Director Peter Marks, and/or other high-level FDA officials<sup>4</sup> involved in the FDA's decisions about testing.<sup>5</sup>
3. FDA records discussing requests and need for and availability and allocation (including across states) of resources for testing for what is now known as SARS-CoV-2 and/or COVID-19 in the U.S.<sup>6</sup>
4. FDA records discussing requests and need for and availability and allocation (including across states)<sup>7</sup> of medical supplies and equipment (including but not limited to drugs, ventilators, and vaccines), Personal Protective Equipment ("PPE") and/or masks for what is now known as SARS-CoV-2 and/or COVID-19 in the U.S.<sup>8</sup>
5. FDA records discussing Remdesivir, Chloroquine, Hydroxychloroquine ("Plaquenil"), Azithromycin ("Zithromax"), convalescent plasma, and/or other drugs for treating what is now known as SARS-CoV-2 and/or COVID-19.<sup>9</sup>
6. FDA records discussing the use of disinfectants to treat what is now known as SARS-CoV-2 and/or COVID-19.<sup>10</sup>
7. Communications between the FDA and non-government entities (including but not limited to private-sector companies, academic institutions and/or individuals) capable of developing tests, or assisting in testing, for what is now known as SARS-CoV-2 and/or COVID-19.<sup>11</sup>
8. FDA records discussing Dr. Stephen Hahn and other high-level FDA officials' divergence from President Trump's public positions regarding what is now known as SARS-CoV-2 and/or COVID-19.<sup>12</sup>
9. FDA records including and/or discussing instructions to classify meetings and/or records relating to what is now known as SARS-CoV-2 and/or COVID-19.<sup>13</sup>

<sup>4</sup> The term "high-level FDA officials" refers to FDA officials occupying the positions identified in the FDA Overview Organization Chart (current as 1/02/2020), <https://www.fda.gov/about-fda/fda-organization-charts/fda-overview-organization-chart>.

<sup>5</sup> Donald McNeil, *Did Federal Officials Really Question W.H.O. Tests for Coronavirus?*, N.Y. Times (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/health/coronavirus-tests-who.html>.

<sup>6</sup> See e.g., Thomas Fuller & Mike Baker, *Coronavirus Death in California Came Weeks Before First Known U.S. Death*, N.Y. Times (Apr. 22, 2020), <https://www.nytimes.com/2020/04/22/us/coronavirus-first-united-states-death.html>.

<sup>7</sup> Toluse Olorunnipa et al., *Governors plead for medical equipment from federal stockpile plagued by shortages and confusion*, Wash. Post (Mar. 21, 2020), [https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html).

<sup>8</sup> *Id.*

<sup>9</sup> *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, White House (Mar. 19, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-6/>; Charles Ornstein, *What We Know—and Don't Know—About Possible Coronavirus Treatments Promoted by Trump*, Politico (Mar. 29, 2020), <https://www.propublica.org/article/what-we-know-and-dont-know-about-possible-coronavirus-treatments-promoted-by-trump>, Michael Crowley et al., *Ignoring Expert Opinion, Trump Again Promotes Use of Hydroxychloroquine*, N.Y. Times (Apr. 5, 2020), <https://www.nytimes.com/2020/04/05/us/politics/trump-hydroxychloroquine-coronavirus.html>.

<sup>10</sup> Jason Slotkin, *NYC Poison Control Sees Uptick in Calls After Trump's Disinfectant Comments*, NPR (Apr. 25, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/25/845015236/nyc-poison-control-sees-uptick-in-calls-after-trumps-disinfectant-comments>; Colin Dwyer, *Lysol Maker, Officials Reject Trump's Disinfectant Idea*, NPR (Apr. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/24/843571171/under-no-circumstance-lysol-maker-officials-reject-trump-s-disinfectant-idea>; EPA provides critical information to the American public about safe disinfectant use (Apr. 23, 2020), <https://www.epa.gov/newsreleases/epa-provides-critical-information-american-public-about-safe-disinfectant-use>.

<sup>11</sup> Bob Ortega et al., *How the government delayed coronavirus testing*, CNN (Apr. 9, 2020), <https://www.cnn.com/2020/04/09/politics/coronavirus-testing-cdc-fda-red-tape-invs/index.html>.

<sup>12</sup> Jason Heid, *How FDA Chief Stephen Hahn Found Himself Between a Rock and a Hard Place*, Texas Monthly (Apr. 20, 2020), <https://www.texasmonthly.com/news/fda-chief-stephen-hahn-coronavirus-pandemic/>

<sup>13</sup> Aram Roston & Marisa Taylor, Exclusive: White House told federal health agency to classify coronavirus deliberations –

10. Communications between the FDA and the White House regarding what is now known as SARS-CoV-2 and/or COVID-19.

### III. FDA SARS-CoV-2 and COVID-19 Communications with Congress, State Governors, and the WHO

11. FDA records including and/or discussing communications (before March 1, 2020) between the FDA and Congress regarding what is now known as SARS-CoV-2 and/or COVID-19, including but not limited to briefings to Congress, members of Congress, Congressional Committees or Subcommittees, and/or Congressional staff about what is now known as SARS-CoV-2 and/or COVID-19.<sup>14</sup>
12. FDA records including and/or discussing communications between the FDA and a state governor or his/her office about what is now known as SARS-CoV-2 and/or COVID-19.
13. FDA records including and/or discussing communications between the FDA and the World Health Organization (“WHO”) about what is now known as SARS-CoV-2 and/or COVID-19.<sup>15</sup>

### B. BACKGROUND

The earliest known case of COVID-19 (the disease caused by what is now known as SARS-CoV-2) reportedly can be traced back to November 17, 2019, in Hubei province, China.<sup>16</sup> By December 31, 2019, health officials in Wuhan posted a notice that they were investigating an outbreak of pneumonia in the city, and the World Health Organization (“WHO”) acknowledged that on that date it “was informed of a cluster of cases of pneumonia of unknown cause.”<sup>17</sup> As of January 3, 2020, Chinese authorities reported a total of 44 patients with pneumonia of unknown etiology to the WHO.<sup>18</sup>

Media reports provide varying accounts of when the U.S. Executive Branch first received notice of what is now known as SARS-CoV-2. *ABC News* reported, for example, that a November intelligence report by the military’s National Center for Medical Intelligence (“NCMI”) detailed concerns about what is now known as SARS-CoV-2, and the report “was briefed multiple times” to the Defense Intelligence Agency (“DIA”), the Pentagon’s Joint Staff, and the White House.<sup>19</sup> According to the *New York Times*, in early January 2020, the State Department’s epidemiologist wrote in a report to the director of national intelligence that the virus was likely to spread across the globe and become a pandemic, and NCMI independently arrived at the same conclusion.<sup>20</sup> The *New York Times* also reported that in January 2020, U.S. intelligence agencies regularly provided information about the global danger of what is now known as SARS-CoV-2 to Executive Branch officials and members of Congress, including in daily briefing papers and digests from the Office of the

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sources, Reuters (Mar. 11, 2020), <https://www.reuters.com/article/us-health-coronavirus-secrecy-exclusive/exclusive-white-house-told-federal-health-agency-to-classify-coronavirus-deliberations-sources-idUSKBN20Y2LM>.

<sup>14</sup> Eric Lipton et al., *He Could Have Seen What Was Coming: Behind Trump’s Failure on the Virus*, N.Y. Times (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>.

<sup>15</sup> *Remarks by President Trump in Press Briefing*, White House (Apr. 14, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing/>; Karen DeYoung, Lena Sun & Emily Rauhala, *Americans at World Health Organization Transmitted Real-Time Information about Coronavirus to Executive Branch*, Wash. Post (Apr. 19, 2020), [https://www.washingtonpost.com/world/national-security/americans-at-world-health-organization-transmitted-real-time-information-about-coronavirus-to-trump-administration/2020/04/19/951c77fa-818c-11ea-9040-68981f488eed\\_story.html](https://www.washingtonpost.com/world/national-security/americans-at-world-health-organization-transmitted-real-time-information-about-coronavirus-to-trump-administration/2020/04/19/951c77fa-818c-11ea-9040-68981f488eed_story.html).

<sup>16</sup> Helen Davidson, *First Covid-19 case happened in November, China government records show*, The Guardian (Mar. 13, 2020), <https://www.theguardian.com/world/2020/mar/13/first-covid-19-case-happened-in-november-china-government-records-show-report>.

<sup>17</sup> Wuhan Municipal Health Commission on the current situation of pneumonia in our city (*translated from Mandarin*), Dec. 31, 2020, available at <http://wjw.wuhan.gov.cn/front/web/showDetail/2019123108989>; World Health Organization, Coronavirus disease (COVID-2019) R&D, available at <https://www.who.int/blueprint/priority-diseases/key-action/novel-coronavirus/en/>.

<sup>18</sup> World Health Organization, *Pneumonia of unknown cause – China* (Jan. 5, 2020), <https://www.who.int/csr/don/05-january-2020-pneumonia-of-unknown-cause-china/en/>.

<sup>19</sup> Josh Margolin & James Gordon Meek, *Intelligence report warned of coronavirus crisis as early as November: Sources*, ABC News (Apr. 8, 2020), <https://abcnews.go.com/Politics/intelligence-report-warned-coronavirus-crisis-early-november-sources/story?id=70031273>.

<sup>20</sup> Eric Lipton, et al., *He Could Have Seen What Was Coming: Behind Trump’s Failure on the Virus*, N.Y. Times (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>.

Director of National Intelligence (“ODNI”) and the Central Intelligence Agency (“CIA”).<sup>21</sup> According to the *Washington Post*, on January 3, 2020, a Chinese official informed Robert Redfield, Director for the Centers for Disease Control and Prevention (“CDC”), of the outbreak of a respiratory illness in the city of Wuhan.<sup>22</sup> Redfield relayed the report to Alex Azar, Secretary for Health and Human Services (“HHS”), who reportedly relayed it to the White House.<sup>23</sup>

Although the Executive Branch has publicly promised transparency, the White House reportedly ordered federal health officials to treat top-level coronavirus meetings as classified to keep meeting participation low and prevent leaks.<sup>24</sup> Classification prevented relevant officials from attending the meetings because they did not possess the requisite security clearances.<sup>25</sup>

On January 21, 2020, the CDC publicly confirmed the first U.S. novel coronavirus case, what is now known as SARS-CoV-2, in the state of Washington.<sup>26</sup> In a memorandum dated January 29, 2020, Peter Navarro, President Trump’s trade advisor, warned the White House of “a full-blown pandemic, imperiling the lives of millions of Americans.”<sup>27</sup> Although President Trump said he did not know about the memorandum at that time, press reports indicate that the President knew about it and was unhappy that Navarro had put his warning in writing.<sup>28</sup> The same day, the White House announced the formation of “a coronavirus task force,” while noting that “[t]he risk of infection for Americans remains low.”<sup>29</sup>

On January 30, 2020, the WHO declared the outbreak a “Public Health Emergency of International Concern.”<sup>30</sup> Hours after that declaration, President Trump said during a speech on trade at a Michigan manufacturing plant, that the virus was “going to have a very good ending for us. So that I can assure you.”<sup>31</sup>

The WHO began supplying diagnostic test kits to various countries in January, but the U.S. did not use that test, choosing to develop its own.<sup>32</sup> Contrary to an April 2018 agreement between the CDC and three of the biggest associations involved in lab testing, the Executive Branch reportedly prevented non-government laboratories from assisting in testing.<sup>33</sup> The CDC released a flawed test in February 2020 that took weeks to correct.<sup>34</sup>

<sup>21</sup> Shane Harris et al., *U.S. intelligence reports from January and February warned about a likely pandemic*, Wash. Post (Mar. 20, 2020), [https://www.washingtonpost.com/national-security/us-intelligence-reports-from-january-and-february-warned-about-a-likely-pandemic/2020/03/20/299d8cda-6ad5-11ea-b5f1-a5a804158597\\_story.html](https://www.washingtonpost.com/national-security/us-intelligence-reports-from-january-and-february-warned-about-a-likely-pandemic/2020/03/20/299d8cda-6ad5-11ea-b5f1-a5a804158597_story.html).

<sup>22</sup> Yasmeen Abutaleb et al., *The U.S. was beset by denial and dysfunction as the coronavirus raged*, Wash. Post (Apr. 4, 2020), <https://www.washingtonpost.com/national-security/2020/04/04/coronavirus-government-dysfunction>.

<sup>23</sup> *Id.*

<sup>24</sup> Aram Roston & Marisa Taylor, *Exclusive: White House told federal health agency to classify coronavirus deliberations – sources*, Reuters (Mar. 11, 2020), <https://www.reuters.com/article/us-health-coronavirus-secrecy-exclusive/exclusive-white-house-told-federal-health-agency-to-classify-coronavirus-deliberations-sources-idUSKBN20Y2LM>.

<sup>25</sup> *Id.*

<sup>26</sup> Press Release, *First Travel-related Case of 2019 Novel Coronavirus Detected in United States*, Centers for Disease Control and Prevention (Jan. 21, 2020), <https://www.cdc.gov/media/releases/2020/p0121-novel-coronavirus-travel-case.html>.

<sup>27</sup> Maggie Haberman, *Trade Adviser Warned White House in January of Risks of a Pandemic*, N.Y. Times (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/us/politics/navarro-warning-trump-coronavirus.html>.

<sup>28</sup> Eric Lipton et al., *He Could Have Seen What Was Coming: Behind Trump’s Failure on the Virus*, N.Y. Times (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>.

<sup>29</sup> *Statement from the Press Secretary Regarding the President’s Coronavirus Task Force*, White House (Jan. 29, 2020), <https://www.whitehouse.gov/briefings-statements/statement-press-secretary-regarding-presidents-coronavirus-task-force/>.

<sup>30</sup> *Statement on the second meeting of the International Health Regulations (2005) Emergency Committee regarding the outbreak of novel coronavirus (2019-nCoV)*, World Health Organization (Jan. 30, 2020), [https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-\(2005\)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-\(2019-ncov\)](https://www.who.int/news-room/detail/30-01-2020-statement-on-the-second-meeting-of-the-international-health-regulations-(2005)-emergency-committee-regarding-the-outbreak-of-novel-coronavirus-(2019-ncov)).

<sup>31</sup> Caitlin Oprysko, *Trump: Coronavirus will have ‘a very good ending for us,’ Politico* (Jan. 30, 2020), <https://www.politico.com/news/2020/01/30/trump-close-cooperation-china-coronavirus-109701>.

<sup>32</sup> Donald McNeil, *Did Federal Officials Really Question W.H.O. Tests for Coronavirus?*, N.Y. Times (Mar. 17, 2020), <https://www.nytimes.com/2020/03/17/health/coronavirus-tests-who.html>.

<sup>33</sup> Bob Ortega et al., *How the government delayed coronavirus testing*, CNN (Apr. 9, 2020), <https://www.cnn.com/2020/04/09/politics/coronavirus-testing-cdc-fda-red-tape-invs/index.html>.

<sup>34</sup> *Id.*



The Executive Branch has responded disparately to state governors' requests for drugs, medical supplies and equipment, prompting questions about whether politics influenced their allocation across states.<sup>35</sup>

From January until early March 2020, President Trump continued to downplay the threat posed by the novel coronavirus.<sup>36</sup> On January 22, President Trump said he was not worried about a pandemic, stating, "We have it totally under control...It's one person coming in from China, and we have it under control. It's going to be just fine."<sup>37</sup> On January 24, President Trump tweeted that the "United States greatly appreciates [China's] efforts and transparency," and "it will all work out well."<sup>38</sup> On February 7, 2020, he tweeted that "as the weather starts to warm...the virus hopefully becomes weaker, and then gone."<sup>39</sup> On February 10, he stated at a New Hampshire rally, "looks like, by April, you know, in theory, when it gets a little warmer, it miraculously goes away."<sup>40</sup> On February 24, he tweeted that "[t]he Coronavirus is very much under control in the USA."<sup>41</sup> On March 7, President Trump publicly stated that "[a]nybody that needs a test, gets a test. They're there. They have the tests. And the tests are beautiful."<sup>42</sup>

On March 13, 2020, however, President Trump declared a national state of emergency to combat the novel coronavirus.<sup>43</sup> On March 16, 2020, in response to a question about his repeated claim of everything being "under control" he said, "If you're talking about the virus, no, that's not under control for any place in the world...I was talking about what we're doing is under control, but I'm not talking about the virus."<sup>44</sup> On March 19, President Trump publicly suggested during his daily coronavirus briefing that the drugs Remdesivir, Chloroquine and Hydroxychloroquine were a possible "game changer" for treating COVID-19,<sup>45</sup> despite insufficient evidence of their efficacy.<sup>46</sup> A few days later, a man died and his wife was hospitalized after the couple ingested a form of Chloroquine.<sup>47</sup>

On April 3, 2020, President Trump reversed previous guidance on masks while announcing that people in the

<sup>35</sup> Toluse Olorunnipa et al., *Governors plead for medical equipment from federal stockpile plagued by shortages and confusion*, Wash. Post (Mar. 21, 2020), [https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d\\_story.html](https://www.washingtonpost.com/politics/governors-plead-for-medical-equipment-from-federal-stockpile-plagued-by-shortages-and-confusion/2020/03/31/18aadda0-728d-11ea-87da-77a8136c1a6d_story.html).

<sup>36</sup> David Leonhardt, *A Complete List of Trump's Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

<sup>37</sup> Matthew J. Belvedere, *Trump says he trusts China's Xi on coronavirus and the US has it 'totally under control'*, CNBC (Jan. 22, 2020), <https://www.cnbc.com/2020/01/22/trump-on-coronavirus-from-china-we-have-it-totally-under-control.html>.

<sup>38</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan. 24, 2020, 4:18 PM), <https://twitter.com/realdonaldtrump/status/1220818115354923009>.

<sup>39</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 7, 2020, 5:31 AM), <https://twitter.com/realdonaldtrump/status/1225728756456808448>.

<sup>40</sup> David Leonhardt, *A Complete List of Trump's Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>.

<sup>41</sup> Donald J. Trump (@realDonaldTrump), Twitter (Feb. 24, 2020, 4:42 PM), <https://twitter.com/realdonaldtrump/status/1232058127740174339>.

<sup>42</sup> *Remarks by President Trump After Tour of the Centers for Disease Control and Prevention, Atlanta, GA*, White House (Mar. 7, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-tour-centers-disease-control-prevention-atlanta-ga/>.

<sup>43</sup> Adam Edelman, Peter Alexander & Kristen Welke, *Trump declares national emergency to combat coronavirus, authorizes waiving of laws and regulations*, NBC News (Mar. 13, 2020), <https://www.nbcnews.com/politics/donald-trump/trump-hold-friday-afternoon-press-conference-coronavirus-n1157981>.

<sup>44</sup> Aaron Blake, *The increasingly damning timeline of Trump's coronavirus response*, Wash. Post (Apr. 8, 2020), <https://www.washingtonpost.com/politics/2020/04/07/timeline-trumps-coronavirus-response-is-increasingly-damning/>.

<sup>45</sup> *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, White House (Mar. 19, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-6/>.

<sup>46</sup> Charles Ornstein, *What We Know — and Don't Know — About Possible Coronavirus Treatments Promoted by Trump*, Politico (Mar. 29, 2020), <https://www.propublica.org/article/what-we-know-and-dont-know-about-possible-coronavirus-treatments-promoted-by-trump>; see also Michael Crowley et al., *Ignoring Expert Opinion, Trump Again Promotes Use of Hydroxychloroquine*, N.Y. Times (Apr. 5, 2020), <https://www.nytimes.com/2020/04/05/us/politics/trump-hydroxychloroquine-coronavirus.html>; Peter Baker et al., *Trump's Aggressive Advocacy of Malaria Drug for Treating Coronavirus Divides Medical Community*, N.Y. Times (Apr. 6, 2020), <https://www.nytimes.com/2020/04/06/us/politics/coronavirus-trump-malaria-drug.html>.

<sup>47</sup> Scott Neuman, *Man Dies, Woman Hospitalized After Taking Form Of Chloroquine To Prevent COVID-19*, NPR (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/820512107/man-dies-woman-hospitalized-after-taking-form-of-chloroquine-to-prevent-covid-19>

U.S. should wear face coverings in public to slow the spread of what is now known as SARS-CoV-2.<sup>48</sup> On April 14, contrary to his previous praise for China's "efforts and transparency,"<sup>49</sup> President Trump announced that he had instructed the Executive Branch to suspend funding to the WHO because it "willingly took China's assurances to face value" and "pushed China's misinformation."<sup>50</sup>

On April 16, 2020, after the White House released nonbinding guidelines recommending how and when states and localities should begin to reopen parts of the economy, President Trump stated that governors could reopen businesses by May 1 or earlier if they believed it prudent.<sup>51</sup> On April 22, 2020, Dr. Rick Bright, former director of HHS Biomedical Advanced Research and Development Authority and deputy assistant secretary for preparedness and response, said that he was dismissed from his positions and transferred to the National Institutes of Health after he pressed for rigorous vetting of Hydroxychloroquine, the drug embraced by President Trump for treating the virus.<sup>52</sup>

On April 23, 2020, President Trump suggested at a White House briefing that an "injection inside" the human body with a disinfectant could help combat COVID-19.<sup>53</sup> The same day, the Environmental Protection Agency issued a press release warning against ingesting disinfectants or applying them on the human body.<sup>54</sup> The day after the President suggested that a disinfectant injection could counter the virus, New York City's poison control center reported receiving a higher-than-normal number of calls, many of them relating to exposure to disinfectants.<sup>55</sup>

### C. APPLICATION FOR EXPEDITED PROCESSING

The Justice Initiative requests expedited processing pursuant to 5 U.S.C. § 552(a)(6)(E), as the information and records requested are urgently needed to inform the public about actual or alleged government activity, *see* 5 U.S.C. § 552(a)(6)(E)(v)(II), and as explained below, the Justice Initiative is an organization "primarily engaged in disseminating information...to inform the public concerning" that activity. 5 U.S.C. § 552(a)(6)(E)(v)(I-II). In addition, the Justice Initiative requests expedition on the grounds that failure to obtain requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of an individual. *See* 5 U.S.C. § 552(a)(6)(E)(v)(I).

The Executive Branch's efforts to counter SARS-CoV-2 are literally a matter of life and death for the American public. The virus is quickly spreading, killing thousands of people daily in the United States.<sup>56</sup> As of April 27, 2020, there were nearly one million confirmed cases of COVID-19 and over 55,000 individuals had died from the virus in the United States.<sup>57</sup> The eventual national death toll will be in the tens to hundreds

<sup>48</sup> Lena Sun & Josh Dawsey, *New face mask guidance comes after battle between White House and CDC*, Wash. Post (Apr. 4, 2019), <https://www.washingtonpost.com/health/2020/04/03/white-house-cdc-turf-battle-over-guidance-broad-use-face-masks-fight-coronavirus/>.

<sup>49</sup> Donald J. Trump (@realDonaldTrump), Twitter (Jan. 24, 2020, 4:18 PM), <https://twitter.com/realdonaldtrump/status/1220818115354923009>.

<sup>50</sup> *Remarks by President Trump in Press Briefing*, White House (Apr. 14, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-press-briefing/>.

<sup>51</sup> Peter Baker & Michael D. Shear, *Trump Says States Can Start Reopening While Acknowledging the Decision Is Theirs*, N.Y. Times (Apr. 16, 2020), <https://www.nytimes.com/2020/04/16/us/politics/coronavirus-trump-guidelines.html>.

<sup>52</sup> *A doctor says he was removed from his federal post after pressing for rigorous vetting of treatments embraced by Trump*, N.Y. Times (Apr. 22, 2020), <https://www.nytimes.com/2020/04/22/us/coronavirus-live-coverage.html#link-652aa9c3>.

<sup>53</sup> *Remarks by President Trump, Vice President Pence, and Members of the Coronavirus Task Force in Press Briefing*, White House (Apr. 23, 2020), <https://www.whitehouse.gov/briefings-statements/remarks-president-trump-vice-president-pence-members-coronavirus-task-force-press-briefing-31/>.

<sup>54</sup> *EPA provides critical information to the American public about safe disinfectant use* (Apr. 23, 2020), <https://www.epa.gov/newsreleases/epa-provides-critical-information-american-public-about-safe-disinfectant-use>.

<sup>55</sup> Jason Slotkin, *NYC Poison Control Sees Uptick In Calls After Trump's Disinfectant Comments*, NPR (Apr. 25, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/25/845015236/nyc-poison-control-sees-uptick-in-calls-after-trumps-disinfectant-comments>.

<sup>56</sup> *See e.g., Coronavirus in the U.S.: Latest Map and Case Count*, N.Y. Times, <https://www.nytimes.com/interactive/2020/us/coronavirus-us-cases.html>.

<sup>57</sup> *See e.g., COVID-19 Dashboard by the Center for Systems Science and Engineering (CSSE) at John Hopkins University, U.S. Map*, <https://coronavirus.jhu.edu/map.html> (last accessed Apr. 27, 2020 at 3:41 pm (EST)).

of thousands, according to estimates by health experts and the government.<sup>58</sup>

The timing and content of the Executive Branch's response to the novel coronavirus, including what it knew or should have known about the virus and when, what measures it has taken to stem the spread, and how it is has engaged with Congress, state governors, WHO and other relevant bodies, is the subject of ongoing and intense public debate.<sup>59</sup> Executive Branch officials have issued conflicting statements about the threat of the virus, the availability of testing, the duration of the risk of transmission, and the efficacy of masks and particular medications and treatment for the disease.<sup>60</sup> As such, there is significant uncertainty about how to interpret government statements and actions relevant for determining how individuals in the U.S. should protect themselves from the coronavirus.<sup>61</sup> Significantly, after President Trump publicly suggested that Chloroquine was a possible "game changer," a man died and his wife was hospitalized after the couple ingested a form of the chemical.<sup>62</sup> The day after the President suggested that a disinfectant injection could counter the virus, New York City's poison control center reported receiving a higher-than-normal number of calls, many of them relating to exposure to disinfectants.<sup>63</sup>

In this context, failure to obtain the requested records on an expedited basis could reasonably be expected to pose an imminent threat to the life or physical safety of individuals in the United States. The information

<sup>58</sup> See e.g., Peter Sullivan, *Fauci: 'Looks like' US deaths will be lower than original projection*, The Hill (Apr. 8, 2020), <https://thehill.com/homenews/coronavirus-report/491779-fauci-looks-like-us-deaths-will-be-lower-than-original-projection>.

<sup>59</sup> See, Section B, *supra*; see also Yasmeen Abutaleb et al., *The U.S. was beset by denial and dysfunction as the coronavirus raged*, Wash. Post (Apr. 4, 2020), <https://www.washingtonpost.com/national-security/2020/04/04/coronavirus-government-dysfunction/>; Josh Margolin & James Gordon Meek, *Intelligence report warned of coronavirus crisis as early as November: Sources*, ABC News (Apr. 8, 2020), <https://abcnews.go.com/Politics/intelligence-report-warned-coronavirus-crisis-early-november-sources/story?id=70031273>; Eric Lipton, et al., *He Could Have Seen What Was Coming: Behind Trump's Failure on the Virus*, N.Y. Times (Apr. 11, 2020), <https://www.nytimes.com/2020/04/11/us/politics/coronavirus-trump-response.html>; Steve Benen, *White House's case against World Health Organization crumbles*, MSNBC (Apr. 20, 2020), <https://www.msnbc.com/rachel-maddow-show/white-house-s-case-against-world-health-organization-crumbles-n1187776>; Michael C. Bender & Rebecca Ballhaus *Trump's Coronavirus Focus Shifts to Reopening Economy, Defending His Response*, WSJ (Apr. 17, 2020), <https://www.wsj.com/articles/trump-assails-critics-of-his-coronavirus-response-as-he-focuses-on-reopening-u-s-11587149080>. For ongoing coverage by major media outlets updated in real-time, see, e.g., Coronavirus, Wash. Post, <https://www.washingtonpost.com/coronavirus/>; The Coronavirus Outbreak, N.Y. Times, <https://www.nytimes.com/news-event/coronavirus>; Coronavirus, Fox News, <https://www.foxnews.com/category/health/infectious-disease/coronavirus>.

<sup>60</sup> See Section B, *supra*; see also *The Executive Branch keeps contradicting itself on coronavirus*, Wash. Post (Mar. 9, 2020), <https://www.youtube.com/watch?v=QjJ1tAdCsTo>; Jesse Naranjo & Rachel Roubein, *Trump vs. Pence: The administration contradicts itself on coronavirus*, Politico (Mar. 13, 2020), <https://www.politico.com/news/2020/03/13/trump-vs-pence-coronavirus-contradictions-127636>; Linda Qiu, Bill Marsh & Jon Huang, *The President vs. the Experts: How Trump Played Down the Coronavirus*, N.Y. Times (Mar. 18, 2020), <https://www.nytimes.com/interactive/2020/03/18/us/trump-coronavirus-statements-timeline.html>; Brad Brooks, *Like the flu? Trump's coronavirus messaging confuses public, pandemic researchers say*, Reuters (Mar. 13, 2020), <https://www.reuters.com/article/us-health-coronavirus-mixed-messages/like-the-flu-trumps-coronavirus-messaging-confuses-public-pandemic-researchers-say-idUSKBN2102GY>.

<sup>61</sup> See e.g., David Leonhardt, *A Complete List of Trump's Attempts to Play Down Coronavirus*, N.Y. Times (Mar. 15, 2020), <https://www.nytimes.com/2020/03/15/opinion/trump-coronavirus.html>; Josh Margolin & James Gordon Meek, *Intelligence report warned of coronavirus crisis as early as November: Sources*, ABC News (Apr. 8, 2020), <https://abcnews.go.com/Politics/intelligence-report-warned-coronavirus-crisis-early-november-sources/story?id=70031273>; Caitlin Oprysko, *Trump says he didn't know of, still hasn't seen Navarro memos on possible pandemic*, Politico (Apr. 7, 2020), <https://www.politico.com/news/2020/04/07/trump-peter-navarro-coronavirus-memos-174237>; Yasmeen Abutaleb et al., *The U.S. was beset by denial and dysfunction as the coronavirus raged*, Wash. Post (Apr. 4, 2020), <https://www.washingtonpost.com/national-security/2020/04/04/coronavirus-government-dysfunction/>; Rachana Pradhan & Christina Jewett, *'Red Dawn Breaking Bad': Officials Warned About Safety Gear Shortfall Early On, Emails Show*, Kaiser Health News (Mar. 28, 2020), <https://khn.org/news/red-dawn-breaking-bad-officials-warned-about-safety-gear-shortfall-early-on-emails-show/>; Christopher Carbone, *America can't reopen without massive increase in coronavirus tests, experts warn*, Fox News (Apr. 20, 2020), <https://www.foxnews.com/science/america-cant-reopen-without-more-coronavirus-tests-experts-warn>; Beaches in Jacksonville, Florida reopen with restrictions, Fox News (Apr. 20, 2020), <https://video.foxnews.com/v/6150879266001#sp=show-clips>; Tamara Keith & Geoff Brumfiel, *Examining Trump's COVID-19 Rhetoric Against Factual Evidence*, NPR (Apr. 17, 2020), <https://www.npr.org/2020/04/17/836719931/examining-trumps-covid-19-rhetoric-against-factual-evidence>.

<sup>62</sup> Scott Neuman, *Man Dies, Woman Hospitalized After Taking Form Of Chloroquine To Prevent COVID-19*, NPR (Mar. 24, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/03/24/820512107/man-dies-woman-hospitalized-after-taking-form-of-chloroquine-to-prevent-covid-19>

<sup>63</sup> Jason Slotkin, *NYC Poison Control Sees Uptick In Calls After Trump's Disinfectant Comments*, NPR (Apr. 25, 2020), <https://www.npr.org/sections/coronavirus-live-updates/2020/04/25/845015236/nyc-poison-control-sees-uptick-in-calls-after-trumps-disinfectant-comments>.



requested here is urgently needed for individuals in the United States to assess the government's response to the virus and to make informed decisions about life and physical safety.

Furthermore, the Justice Initiative is "primarily engaged in disseminating information" within the meaning of the FOIA.<sup>64</sup> *Am. Civil Liberties Union v. Dep't of Justice*, 321 F. Supp. 2d 24, 29 n.5 (D.D.C. 2004) (finding that a non-profit, public interest group that "gathers information of potential interest to a segment of the public, uses its editorial skills to turn the raw material into a distinct work, and distributes that work to an audience" is "primarily engaged in disseminating information" within the meaning of the statute and regulations); *cf. Elec. Privacy Info. Ctr. v. U.S. Dep't of Def.*, 241 F. Supp. 2d 5, 11-12 (D.D.C. 2003) (finding that the Electronic Privacy Information Center was a representative of the news media based on its publication of seven books about national and international policies relating to privacy and civil rights); *see also Nat'l Sec. Archive v. U.S. Dep't of Def.*, 880 F.2d 1381, 1386 (D.C. Cir. 1989) (National Security Archive deemed a representative of the news media after publishing one book and indicating its intention to publish a set of documents on national and international politics and nuclear policy).

The Justice Initiative is an operating public interest law center dedicated to upholding human rights and the rule of law through litigation, advocacy, research, and technical assistance, with offices in New York, London, and Berlin. It is part of the Open Society Institute ("OSI"), a tax-exempt, non-partisan, not-for-profit organization, headquartered in New York City. OSI believes that solutions to national, regional, and global challenges require the free exchange of ideas and thought, and works to build vibrant and inclusive societies, grounded in respect for human rights and the rule of law, whose governments are accountable and open to the participation of all people. In support of their shared mission, OSI and the Justice Initiative share information with the public free of charge, through their websites, newsletters, and other publications to promote public understanding and robust debate. Disseminating information is among the Justice Initiative's core activities. To accomplish its goals, the Justice Initiative maintains a website, [www.justiceinitiative.org](http://www.justiceinitiative.org), through which it disseminates reports, briefing papers, fact sheets and other publications relating to its mission (<https://www.justiceinitiative.org/publications>). It also directly distributes hard copies of publications and disseminates information through quarterly email newsletters, blogs ([www.opensocietyfoundations.org/voices](http://www.opensocietyfoundations.org/voices)), Twitter ([www.twitter.com/OSFJustice](https://twitter.com/OSFJustice)) and Facebook ([www.facebook.com/OpenSocietyFoundations](https://www.facebook.com/OpenSocietyFoundations)).

We affirm that information and statements concerning the need for expedited processing are true and correct to the best of our knowledge and belief.

#### **D. APPLICATION FOR FEE WAIVER**

We request a waiver of search, review and duplication fees on the grounds that disclosure of the requested information "is in the public interest because it is likely to contribute significantly to public understanding of the operations or activities of the government and is not primarily in the commercial interest of the requester." 5 U.S.C. § 552(a)(4)(A)(iii).

As set forth in Section C above, the information and records at issue will contribute significantly to the public understanding of the timing and content of the government's response to COVID-19. Moreover, the Justice Initiative, a non-profit entity, does not seek disclosure of these records for commercial gain and intends to disseminate the information disclosed from this request to the public at no cost.

In addition, for the same reasons that render it "primarily engaged in disseminating information," *see* Section C *supra*, the Justice Initiative is also a "representative of the news media" within the meaning of the FOIA. As such, it is entitled to a fee waiver. *See* 5 U.S.C. § 552(a)(4)(A)(ii)(II); *see also Judicial Watch, Inc. v. Rossotti*, 326 F.3d 1309, 1312 (D.C. Cir. 2003) (recognizing Congress's intent that FOIA's fee waiver provision is to be "liberally construed in favor of waivers for noncommercial requesters.").

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<sup>64</sup> *See* 5 U.S.C. § 552(a)(6)(E)(v)(II).

\* \* \* \* \*

Pursuant to 5 U.S.C. § 552(a)(6)(E)(ii)(I) and 5 U.S.C. § 552(a)(6)(A)(i), respectively, we look forward to your reply to the request for expedited processing within ten calendar days, and to the request for disclosure within twenty days.

We request that responsive records be provided electronically in their native file format, if possible. *See* 5 U.S.C. § 552(a)(3)(B). Alternatively, we request that the records be provided electronically in a text-searchable, static-image format (PDF), in the best image quality in the agency's possession, and that the records be provided in separate, Bates-stamped files.

If this request is denied in whole or part, please justify all withholdings by reference to specific exemptions and statutes, as applicable. For each withholding please also explain why your agency "reasonably foresees that disclosure would harm an interest protected by an exemption" or why "disclosure is prohibited by law[.]" 5 U.S.C. § 552(a)(8)(A)(i). We seek the release of all segregable portions of otherwise exempt material, *see* 5 U.S.C. § 552(b). We also reserve the right to appeal any decision in relation to this Request.

Thank you for your prompt attention to this Request. Please **send all records and correspondence by email** to Amrit Singh at [amrit.singh@opensocietyfoundations.org](mailto:amrit.singh@opensocietyfoundations.org).

Sincerely,

A handwritten signature in black ink, appearing to read "Amrit Singh", enclosed within a thin black rectangular border.

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